

REMARKS

Responsive to the restriction requirement imposed in the outstanding Official Action, applicants hereby provisionally elect Group I, with traverse.

As to the primers identified on page 4 of the Official Action, applicants hereby provisionally elect SEQ ID Nos. 6 and 7, with traverse. SEQ ID Nos. 6 and 7 are selected on the basis that they amplify the nucleic acid sequence encoding for CD 59. Applicants believe that all of the elected claims read on the elected species.

The grounds for traverse are that a search and examination of all the pending claims in their full scope fails to place a burden on the Patent Office. As the Examiner is aware, there are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent; and

(B) There must be a serious burden on the Patent Office if restriction is required (see MPEP § 803).

While the Official Action contends that the groups have different structures and functions, applicants note that all the pending claims are linked in that the nucleic acid gives rise to the recited polypeptide. Of course, the recited polypeptide in turn gives rise to the antibodies recited in the claims.

As a result, applicants respectfully submit that the groups are sufficiently related that a search and examination of

the claims identified in Groups I-IV fails to place a serious burden on the Patent Office.

As to the election of the primers as recited in claim 10, the Examiner's attention is respectfully directed to MPEP § 803.04 which states that to further aid the biotechnology industry, without creating an undue burden on the Office, the Commissioner has decided to partially waive the requirements of 37 CFR 1.141 *et seq.* and permit a reasonable number of such sequences to be claimed in a single application (See *Examination of Patent Applications Containing Nucleotide Sequences*, 1192 O.G. 68, November 19, 1996).


As a result, it was been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct sequences will be examined in a single application without restriction. In addition to the specifically selected sequences, those sequences which are patentably indistinct from the selected sequences will also be examined.

Thus, as the groups are sufficiently related, applicants believe that the Office Action fails to satisfy its burden in showing that an examination of all of the claims in their full scope places a serious burden on the Patent Office.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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